

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 96-0641 ST SALES AND USE TAX

FOR THE YEARS 1993 THROUGH 1995

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ISSUES

I. Sales and Use Tax: Application of sales tax to morticians.

Authority: Sales Tax Information Bulletin #49, Indiana Code § 6-2.5-5-8

Sales Tax Information Bulletin #49 states that a "standard service" package is subject to sales tax on 50% of its price. It further states that any items of tangible personal property provided in conjunction with a "standard service" are fully subject to sales tax. Can a taxpayer add a casket's separately stated price to the "standard service" price for computation of sales tax on 50% of the total?

FACTS

The taxpayer is an Indiana corporation operating as a funeral home offering funeral services, and selling funeral accouterments, like caskets, urns, and burial clothing. When the taxpayer furnishes funeral accouterments, the use of the funeral home or hearse, it acts as a retail merchant selling and renting tangible personal property and it must collect and remit sales tax to the Department. The Department audited the taxpayer in June 1996. While reviewing taxpayer's contracts with its previous customers, the Department's Auditor noticed that the taxpayer segregated the casket's cost from the "Traditional Service Package", for disclosure to its customer, but combined the casket's cost with the "Traditional Service Package", and computed sales tax on 50% of the combination. The Department assessed taxes on 50% of the "Traditional Service Package" following Sales Tax Information Bulletin #49 and 100% of the caskets cost. Taxpayer filed a timely protest.

DISCUSSION

I. Sales and Use Tax: Application of sales tax to morticians

Sales Tax Information Bulletin #49 provides two ways morticians calculate sales tax on items they sell or rent. The mortician may segregate personal property charges from service charges, with tax due on all tangible personal property furnished. Alternatively, the mortician may offer a "standard service" package, like taxpayer's "Traditional Service Package," wherein specific personal property and services are available for a pre-set charge. For this method, morticians compute sales tax on fifty percent (50%) of the total pre-set price. Any additional personal property furnished to the consumer above the "standard service" is taxable. The information bulletin also states that providing a breakdown for a unit sale for the customer's information will not alone change this method of figuring tax. After Sales Tax Information Bulletin #49's publication, the Federal Trade Commission promulgated rules that required morticians to state the price of the casket separately from "standard service" prices.

The Department's audit revealed that taxpayer furnished tangible personal property to customers as part of its charges for funeral services. The Department's auditor challenged the Taxpayer's computation of sales tax based on 50% of the total of the "Traditional Service Package" price plus the casket price. Taxpayer explained that the Federal Trade Commission's Funeral Industry Rule¹ requires them to segregate the casket's cost from the "Traditional Service Package."

Taxpayer now argues that prior to the FTC's rule, the "Traditional Service Packages" included the casket's cost; therefore, they merely applied the Department's Sales Tax Information Bulletin #49 by adding the casket's cost to the "Traditional Service Package" and computed sales tax on 50% of the total. Taxpayer's position is untenable. Despite the FTC's rule requiring taxpayer segregate the casket price from the "standard service", taxpayer continues to compute sales tax as if the segregation had not occurred; although, Sales Tax Information Bulletin #49 states that "[a]ny charges for tangible personal property over and above the ["standard service"] price are taxable on that charge." Taxpayer admits that its "Traditional Service Package" contains a mix of service charges and tangible personal property charges, and the casket's price is separate. The plain language of the Department's information bulletin instructed the taxpayer how to compute the sales tax.¹

FINDING

The Department finds that the taxpayer should have collected sales tax on 100% of the casket's price, and collect sales tax on 50% of the "standard service price." Because taxpayer collected some sales tax on the price of the casket, the Department agrees to allow credit for sales tax collected on the casket towards the uncollected tax that is

due and owing on the price of the casket.

¹16 C.F.R. § 453.